IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1733 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN ATMARAM PATEL - Appellant(s)
Versus
MANOJKUMAR JASHWANTLAL RAVAL & 1 - Defendant(s)

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Appearance :
MR PJ MEHTA for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
RULE SERVED for Defendant(s) : 1 - 2.
MR MAULIK J SHELAT for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/05/2007
ORAL JUDGMENT

Present Appeal has been filed by the appellant herein, original-claimant challenging the judgment and order passed by the learned Commissioner for Workmen Compensation, Ahmedabad,

dated 7th August 2002 in Workmen Compensation Application No. 60/92 [Old No. 11/1990] in dismissing the said application.

2. The appellant was working as driver in opponent No.1 Electric Goods Firm. He was driving rickshaw on a monthly salary of Rs. 600/- for transportation work of loading and unloading of electrical goods as well as accessories. That on 10th February 1986 while he was on duty he sustained injuries due to accident and therefore he filed an application for compensation. That the vehicle was insured by the Oriental Fire and General Insurance Company Ltd. A complaint was also lodged before the P.I., Dahod with regard to the said accident. It was the case on behalf of the original-claimant that a notice was served upon the Insurance Company for releasing compensation along with delay condonation application and the delay was condoned. That though served nobody appeared on behalf of the employer. The learned Commissioner for Workmen's

Compensation framed the Issues and thereafter by the impugned judgment and order dated 7.8.2002 he dismissed the said application by holding that the applicant has failed to prove and/or establish employer-employee relationship and that he has also failed to prove that accident has taken place while he was on duty on 10th February 1986. Being aggrieved and dissatisfied with the judgment and order passed by the learned Commissioner for Workmen Compensation in dismissing the Workmen Compensation Application, the appellant has preferred the present appeal.

3. Shri PJ Mehta, learned advocate appearing on behalf of the appellant has vehemently submitted that when the employer has not contested the application and has not filed any reply denying the employer-employee relationship and factum of accident while the appellant was on duty, the Workmen Compensation Commissioner was not justified in dismissing the claim application on the ground that the appellant has failed to

prove the employer-employee relationship and that the accident has taken place while he was on duty. Therefore it is requested to allow the present appeal. Shri Maulik Shelat, learned advocate appearing on behalf of the Insurance Company has tried to support the judgment and order passed by the learned Commissioner for Workmen's Compensation by submitting that on the facts and circumstances of the case the Commissioner for Workmen's Compensation was justified in dismissing the application.

4. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that the complaint was filed with regard to the accident, and before filing the claim petition notice was issued upon the Insurance Company and thereafter the claim petition was filed. It is required to be noted that, though served the employer has not appeared and/or did not submit any reply and has never raised any objection disputing employer-employee

relationship and/or the accident. Thus, the employer has never disputed the employer-employee relationship and the employer has also not raised any dispute that the accident has not taken place while the appellant was on duty. In absence of any dispute and objection raised by the employer, the learned Commissioner for Workmen's Compensation in the facts and circumstances of the case was not justified in dismissing the claim petition on the ground that the appellant has failed to establish any employer-employee relationship and has also failed to prove that he has sustained injuries in an accident which had taken place while he was on duty. Under the circumstances, the judgment and order passed by the learned Commissioner for Workmen's Compensation in dismissing the claim application is required to be quashed and set aside. It is also not in dispute that there was Insurance Policy covering the risk from 9.3.1985 to 8.3.1996. Now, considering the salary of the appellant at Rs. 600 and as per the provisions of

Section 4(1)(b) of the Workmen's Compensation Act, 1953, 50% of the total salary comes to Rs. 300 and if the age factor 46 is multiplied by 166.29, considering the 20% disability the appellant would be entitled to Rs. 9977 towards the compensation amount.

5. For the reasons stated above, the Appeal succeeds. The judgment and order dated 7.8.2002 passed by the learned Commissioner for Workmen's Compensation, Ahmedabad in Workmen Compensation Application No. 60/92 [Old No. 11/90] is hereby quashed and set aside, and the Workmen Compensation Application No. 60/92 is allowed in part. The opponents are directed to pay Rs. 9977 towards compensation with 6% interest. The appellant would also be entitled to 50% of the penalty. Considering the fact that the accident had taken place in 1986, the respondents more particularly the Insurance Company is directed to pay the amount within the period of three months from today. The Appeal is accordingly partly

allowed to the aforesaid extent. However, there shall be no order as to costs.

[M.R. Shah, J.]

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